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ALTS
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

Jonathan Askin
General Counsel

MAY 17, 2000

VIA COURIER

Mr. Lawrence Strickling
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.—Room 5-C312
Washington, DC 20554

Re: Collocation Rapid Response Team, CC Docket 98-147

Dear Mr. Strickling:

On April 4, 2000, I wrote to you requesting that the Commission establish a "collocation rapid response system" as the Commission considers its collocation rules in response to the remand decision of the United States Court of Appeals for the District of Columbia Circuit in *GTE Service Corporation v. Federal Communications Commission* ("*GTE*")[1]. Similar to the system established by the Commission following the Supreme Court's decision in *AT&T v. Iowa Utilities Board,*[2] such a system would address any disputes between carriers in the interim. On April 21, 2000, USTA filed a letter responding that such a system is unnecessary and unlawful considering that the *GTE* decision vacated, in part, the Commission's collocation rules.[3] ALTS strongly disagrees with USTA's position and considers a rapid response team now more vital than ever in light of the intended practices specified by the RBOCs and GTE ("the ILECs") in their so-called "commitment letters" to the Commission. True commitments from the ILECs to continue providing collocation of competitive equipment while the Commission considers the D.C. Circuit's remand is essential to overcoming the Digital Divide and restoring certainty to the competitive marketplace.

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1 *GTE Service Corporation v. Federal Communications Commission*, No. 99-1201, slip opinion (D.C. Cir Mar. 17, 2000) ("*GTE*").

2 *See Public Notice*, DA 99-532 "Common Carrier Bureau Establishes Rapid-Response System to Minimize Disputes Arising From Supreme Court's *Iowa Utilities Board* Order," (rel. Mar. 17, 1999) ("*Rapid Response Public Notice*").

3 Letter from Keith Townsend of USTA to Lawrence Strickling, dated April 21, 2000.

Contrary to USTA's assertion, there *is* precedent for the Commission obtaining such commitments from the ILECs in the wake of a remand decision vacating Commission rules. In fact, each of the ILECs did so in response to the Commission's request following *Iowa Utilities Board*.[4] Several ILECs in fact agreed that "the industry faces a period of potential uncertainty"[5] and that such commitments "to maintain the status quo [would] avoid marketplace uncertainty prior to the Commission's issuance of new network element rules."[6] Similarly, uncertainty in the marketplace exists now, and the ILECs continuing in the interim to provide collocation in the same manner in which it was available before the *GTE* decision would resolve that uncertainty, allowing competition to progress.

ALTS is confident that the revised Commission rules will allow collocation of most CLEC equipment and that its definition of "necessary" will protect DSLAMs and other basic equipment that CLECs seek to collocate. We appreciate the Commission's efforts in responding to our request by obtaining letters from the ILECs regarding their intended practices in the wake of the *GTE* decision. While ALTS is heartened to learn that no ILEC plans to require removal of already collocated equipment at this time, ALTS is dismayed by the ILECs' assurances to *prohibit* similar collocation requests received after the court's decision was issued on March 17, 2000 and before the Commission issues a remand decision.[7] Disruption in the marketplace will most certainly occur if the ILECs are allowed to unilaterally interpret the *GTE* decision and impose their own definition of "necessary" to prohibit CLECs from installing additional equipment. If such practices are permitted, many CLECs will be unable to roll-out competitive services, especially in rural America where they have not already deployed facilities. The result will be a stifling of competition and broadband deployment throughout America.

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4 *See* CC Docket No. 96-98: Letter from Edward D. Young III of Bell Atlantic to Lawrence Strickling, dated February 8, 1999; Letter from Dale (Zeke) Robertson and Sandy Kinney, both of SBC, to Lawrence Strickling, dated February 9, 1999; Letter from Sidney Boren of BellSouth to Lawrence Strickling, dated February 11, 1999; Letter from Bruce K. Posey and Katherine L. Fleming, both of US West, to Lawrence Strickling, dated February 11, 1999; Letter from Barry K. Allen of Ameritech to Lawrence Strickling, dated February 11, 1999; Letter from William P. Barr of GTE to Lawrence Strickling, dated February 12, 1999.

5 Letter from Dale (Zeke) Robertson and Sandy Kinney, both of SBC, to Lawrence Strickling, dated February 9, 1999, CC Docket No. 96-98.

6 Letter from Barry K. Allen of Ameritech to Lawrence Strickling, dated February 11, 1999, CC Docket No. 96-98.

7 *See* CC Docket No. 98-147: Letter from Alan F. Ciamporcero of GTE to Lawrence Strickling, dated April 14, 2000; Letter from Robert T. Blau of BellSouth to Lawrence Strickling, dated April 14, 2000; Letter from Priscilla Hill-Ardoin of SBC to Lawrence Strickling, dated April 14, 2000; Letter from Edward D. Young III of Bell Atlantic to Lawrence Strickling, dated April 18, 2000; Letter from Melissa E. Newman of US West to Lawrence Strickling, dated April 24, 2000.

The aftermath of *GTE* must not become an opportunity for the ILECs to single-handedly halt the growth of competition. There is evidence that the ILECs are already positioning themselves to unilaterally impose their view of *GTE* on competitive carriers by modifying their tariff offerings.[8] Furthermore, US West has presented to several ALTS members a memorandum detailing which collocation applications received after March 17, 2000 will be rejected for equipment specifications, including "Anything with Router" and "Anything with Switch." By unilaterally rejecting such equipment, the ILECs are violating the Commission's rules, which require them to prove to a state commission that equipment falls outside the scope of Section 251(c)(6) whenever they object to collocation of such equipment by a requesting telecommunications carrier.[9] The D.C. Circuit's decision did not in any way vacate these procedural aspects of the Commission's order and certainly did not grant the ILECs the right to act as arbiters of statutory interpretation. The ILECs continue to be bound by statute to provide collocation of necessary equipment, regardless of the current status of certain of the Commission's rules implementing the statute. Thus, the burden of proof remains on the ILECs to show, either to a state commission or the FCC, that a specific piece of equipment is not necessary for interconnection or access to unbundled network elements before refusing to allow collocation of such equipment. Because the ILECs have already shown their propensity to utilize impermissible self-help practices, ALTS submits that an FCC rapid response team is urgently needed to prevent the ILECs from continuing to game the system for their own advantage and to undermine competition.

Furthermore, under Section 251(c)(2), the ILECs must provide interconnection on nondiscriminatory terms and conditions at least equal to those it provides itself or its affiliate. In the *Local Competition Order*, the Commission found that physical collocation was a method of interconnection.[10] Thus, to the extent that an ILEC continues to provide interconnection to itself or its affiliate through collocation of certain multi-functional equipment, it must provide such interconnection through collocation to a requesting CLEC. Moreover, the fact that an ILEC itself employs such equipment is compelling evidence that such equipment is indeed "necessary" and not overly burdensome for the ILEC to collocate.

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8 Letter from DSL Access Telecommunications Alliance ("DATA") to Lawrence Strickling, dated April 18, 2000, CC Docket No. 98-147.

9 47 C.F.R. § 51.323(b).

10 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499, ¶ 551 (1996) ("*Local Competition Order*").

As the Commission has recognized, "modern technology has tended to blur the line between switching equipment and multiplexing equipment."[11] Telecommunications equipment is systematically and rapidly becoming smaller and more efficient, particularly as software is used in place of hardware to provide features and functionality. "This trend in manufacturing has benefited service providers and their customers by reducing costs, promoting efficient network design, and expanding the range of possible service offerings."[12] Emerging equipment is increasingly multi-functional, with those functions incapable of separation from the equipment. Thus, the fact that a piece of equipment is capable of performing tasks that are not essential for interconnection or access to unbundled network elements should not be the litmus test of whether the equipment itself is "necessary" for interconnection or access to unbundled network elements. If that were so, CLECs (and ILEC affiliates) would be prevented from taking advantage of technological advances and would be forced to install outdated, inefficient equipment. Certainly, that cannot be what Congress intended when it enacted the Telecommunications Act.

Because telecommunications equipment is now being manufactured with multi-functionality, ALTS submits that such equipment is "necessary" under Section 251(c)(6). ALTS is confident that whatever definition of "necessary" the Commission adopts, the vast majority of equipment CLECs seek to collocate will fall within that definition. Thus, the most fair and least disruptive interim solution is for the ILECs to continue allowing CLECs to collocate equipment in the same manner in which collocation was available before the *GTE* decision, particularly if they provide such collocation to themselves or their affiliates. If the ILECs do choose to object to certain equipment, they must not be permitted to unilaterally reject its collocation. They must submit their objections to a state commission or the FCC to prove that such equipment falls outside of Section 251(c)(6).

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11 *Local Competition Order* ¶ 581; Deployment of Wireline Services Offering Advanced Telecommunications Capability, *First Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 4761, ¶ 26 (1999) ("*Collocation Order*").

12 *Collocation Order* ¶ 26.

Pursuant to section 1.1206(b) of the Commission's rules, ALTS is submitting an original and one copy of this letter for inclusion in the public record of the above referenced docket. Please direct any questions regarding this matter to the undersigned at (202) 969-2597.

Sincerely,

Jonathan Askin

cc: Magalie Roman Salas, Secretary, FCC
Chairman William Kennard
Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani
Kathy Brown
Dorothy Attwood
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